

United States Senate
WASHINGTON, DC 20510-3703

COMMITTEES:

COMMITTEE ON FINANCE

COMMITTEE ON BUDGET

COMMITTEE ON ENERGY & NATURAL RESOURCES

SELECT COMMITTEE ON INTELLIGENCE

JOINT COMMITTEE ON TAXATION

June 26, 2018

506

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street Southwest
Washington, DC 20554

Dear Chairman Pai:

I am writing to ask what steps, if any, the Federal Communication Commission (FCC) has taken to ensure that cell site simulators used by law enforcement agencies do not interfere with 9-1-1 emergency mobile services and the mobile communications of innocent Americans.

Cell site simulators, which are more commonly described in the media as “Stingrays” or “IMSI catchers,” mimic mobile telephone towers to locate and identify nearby mobile devices, and can covertly intercept calls and other communications from those devices. Cell site simulators have become standard tools for federal, state, and local law enforcement, which deploy them for a broad range of purposes. Because cell site simulators operate in licensed mobile spectrum, they are subject to oversight and regulation by the FCC.

In addition to the purportedly stringent testing requirements imposed on cell site simulators by the FCC, federal law enforcement agencies have repeatedly represented to federal courts that these devices cause minimal interference. It is increasingly clear, however, that those agencies take no active steps to establish the veracity of their claims. For instance, the Department of Homeland Security (DHS) recently confirmed to me that they neither undertake nor fund independent interference testing of their cell site simulators. The Department of Justice (DOJ) has provided me with information about this topic, but limited its public disclosure by marking it Law Enforcement Sensitive. I’ve included DOJ’s response with this letter. The lack of serious testing by law enforcement in this country stands in stark contrast to the practices of our Canadian law enforcement allies—who have tested this technology and determined that cell site simulators do cause significant interference to emergency services—and to allegations from civil liberties groups, who have long noted the considerable potential for interference.

The FCC has an obligation to ensure that surveillance technology which it certifies does not interfere with emergency services or the mobile communications of innocent Americans who are in the same neighborhood where law enforcement is using a cell site simulator. Given the total failure by DHS to ensure that the surveillance technology it uses does not interfere with the communications of innocent Americans, and the refusal of the DOJ to provide public, candid

answers about its own testing or lack thereof, the FCC has an even greater duty to closely supervise this surveillance technology and its potential collateral impact on public safety-related services, such as 9-1-1.

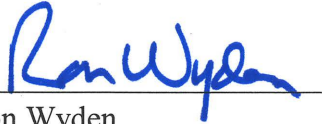
As such, please provide answers to the following questions no later than July 13, 2018:

1. What, if any, testing does the FCC conduct or require to ensure that cell site simulators certified by the FCC and that are used by state and local law enforcement agencies do not disrupt communications with 9-1-1 or other emergency services? Please provide a detailed explanation of the results of any testing conducted of cell site simulators certified by the FCC. If the Commission does not conduct or require testing, please explain why the Commission does not believe that testing for interference with 9-1-1 is necessary.
2. As part of the certification process, does the FCC test whether cell site simulators might disrupt non-emergency cellular telephone service or wireless internet access, including both the mobile devices targeted for surveillance and other nearby devices used by innocent bystanders? If so, please describe the FCC's findings. If not, why not?
3. What, if any, testing does the FCC conduct or require to assess whether or how cell site simulators affect the functionality of cellular telephone handsets, including any effects on the power consumption and broadcast strength of those handsets? Please provide a detailed explanation of the results of any such testing conducted of cell site simulators certified by the FCC. If the Commission does not conduct or require testing, please explain why the Commission does not believe that such testing is necessary.
4. The FCC is required by law to determine that certification of a device is in the service of the public interest, convenience, and necessity. If an FCC testing certification body determines that a device complies with the technical standards for certification, does the Commission then assume that certification would serve the public interest, convenience, and necessity? If so, why? Please describe how, if at all, the FCC considers the disruption of cellular telephone service, wireless internet access, or any other applications when deciding if certifying a cell site simulator serves the public interest.
5. People who are deaf, hard of hearing, or speech disabled rely on Real Time Texting (RTT) devices to communicate. RTT devices are required to be capable of transmitting and receiving RTT communications to and from any 9-1-1 public safety answering point in the United States.
 - a. Please describe any testing the FCC has done on cell site simulators to ensure that they do not impede the transmission of RTT.
 - b. Please further describe any specific efforts the FCC has undertaken to ensure that cell site simulators do not disrupt the ability of people with disabilities to communicate with emergency services.
 - c. If independent testing of an FCC-certified cell site simulator were to reveal that the cell site simulator in fact disrupts RTT communications with 9-1-1, would the FCC revoke the certification of that device?
6. The FCC has required mobile wireless service providers and device manufacturers to offer handsets that do not cause interference with hearing aids and cochlear implants. Please describe what efforts, if any, the FCC has undertaken to ensure that cell site simulators do not interfere with hearing aids and cochlear implant compatible handsets.

7. Wireless Emergency Alert-enabled mobile devices must meet certain conditions under FCC regulations, including the ability to monitor for alert messages and present the alert content. Please describe any efforts that the FCC has undertaken to ensure that cell site simulators do not disrupt transmissions of Wireless Emergency Alert-enabled mobile devices.

If you have any questions about this request, please contact Chris Soghoian in my office.

Sincerely,



Ron Wyden
United States Senator

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 22 2018

The Honorable Ron Wyden
United States Senate
Washington, DC 20510

Dear Senator Wyden:

This responds to your letter to the Attorney General dated August 1, 2017, regarding the use of cell-site simulator technology, also known as "IMSI catchers" or "stingrays." We are sending identical responses to the other Senators who joined your letter. We apologize for our delay in responding.

Cell-site simulator devices (CSSs) provide valuable assistance in support of important public safety objectives. Whether deployed as part of a fugitive apprehension effort, a complex narcotics investigation, or to locate and rescue a kidnapped child, CSSs fulfill critical law enforcement operational needs. As with any law enforcement capability, the Department of Justice (Department) and its components must use CSSs in a manner that is consistent with the requirements and protections of the Constitution and applicable statutory authorities.

(U//LES-NF) Your letter notes the Department's adopted policy guidance that established common principles for the use of CSSs across the Department. Law enforcement agents can deploy CSSs to locate cellular devices whose unique electronic identifiers are already known to law enforcement, or determine the unique electronic identifiers of unknown devices by collecting certain limited signaling information from specific devices. You asked specifically about the potential for CSSs utilized by the Federal Bureau of Investigation (FBI) to affect or interfere with nearby cellular phones. The FBI developed protocols based on legal requirements to operate CSSs with minimum interference and limited to specific targets. *See* 18 U.S.C. § 3124. The CSSs are operated in constant motion at the lowest power level necessary to accomplish the mission, minimizing interference and avoiding compromise or detection. The FBI has advised that it does not test or measure interference levels of its CSSs and has no testing data or information available.

ⁱ (U) LAW ENFORCEMENT SENSITIVE NOFORN: The information marked (U//LES-NF) in this document is the property of FBI and may be distributed within the Federal Government (and its contractors), US intelligence, law enforcement, public safety or protection officials and individuals with a need to know. Distribution beyond these entities without FBI authorization is prohibited. Precautions should be taken to ensure this information is stored and/or destroyed in a manner that precludes unauthorized access. Information bearing the LES NOFORN caveat may not be used in legal proceedings without first receiving authorization from the originating agency. Recipients are prohibited from subsequently posting the information marked LES on a website or an unclassified network.

The Honorable Ron Wyden
Page Two

Your letter also references a Royal Canadian Mounted Police report dated January 5, 2011. While the Department is not in a position to comment on the report's findings, nor on that agency's specific equipment models and configurations, 18 U.S.C. § 3124 requires operating CSSs "with a minimum of interference" to cell service. The FBI specifically configures its CSSs to avoid interference with 911 calls and employs affirmative measures to ensure legal compliance.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



Stephen E. Boyd
Assistant Attorney General

(U) LAW ENFORCEMENT SENSITIVE NOFORN: The information marked (U//LES-NF) in this document is the property of FBI and may be distributed within the Federal Government (and its contractors), US intelligence, law enforcement, public safety or protection officials and individuals with a need to know. Distribution beyond these entities without FBI authorization is prohibited. Precautions should be taken to ensure this information is stored and/or destroyed in a manner that precludes unauthorized access. Information bearing the LES NOFORN caveat may not be used in legal proceedings without first receiving authorization from the originating agency. Recipients are prohibited from subsequently posting the information marked LES on a website or an unclassified network.



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

November 13, 2018

The Honorable Ron Wyden
United States Senate
221 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Wyden:

I write in response to your letter seeking information on our equipment-authorization process regarding cell-site simulators. As you may recall, Congress has entrusted the Commission with the responsibility of authorizing commercial wireless equipment—specifically, to assess the impact and interaction of such equipment with the radiofrequency environment. Accordingly, cell-site simulators are evaluated to ensure they meet the Commission’s technical rules regarding radiofrequency transmissions. These rules are carefully designed to minimize the potential for harmful radiofrequency interference. Every certification is based upon laboratory testing of a sample, or samples, and then submitted for review by an FCC-recognized Telecommunications Certification Body.

You note a report from Canada and unsupported allegations that cell-site simulators cause significant interference to emergency services. Career Commission staff was unable to find actual test results by law enforcement authorities in Canada or any other credible evidence that authorized cell-site simulators used by federal law enforcement in the United States are failing to comply with the domestic requirement to cause a “minimum of interference.” 18 U.S.C. § 3124. Commission staff would be pleased to review such a report or other evidence of harmful interference should you make it available.

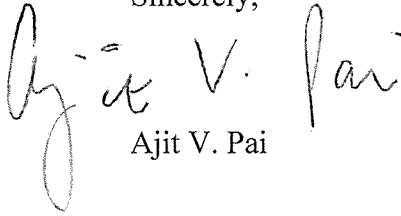
I understand you raise these questions in light of your concerns about the appropriate law enforcement use of cell-site simulators. In this regard, the Commission’s role is limited. We do not have the authority or expertise to determine which technologies are most appropriate for law enforcement use. Additionally, we cannot credibly question the conclusion of the bipartisan 2016 report of the House Committee on Oversight and Government Reform on “Law Enforcement Use of Cell-Site Simulation Technologies: Privacy Concerns and Recommendations,” that “emerging surveillance technologies like cell-site simulators represent a valuable law enforcement tool.” Finally, under current law we cannot proscribe the use of any technology by federal law enforcement—our jurisdiction does not extend to federal users.

Nonetheless, I agree with you that the Commission must continue to work with our federal partners to address issues that may arise in the use of cell-site simulators, and we look forward to reviewing any reports or credible evidence that cell-site simulators are creating

Page 2—The Honorable Wyden

harmful interference to normal operations. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in cursive script that reads "Ajit V. Pai". The signature is written in dark ink and is positioned to the left of the printed name.

Ajit V. Pai